



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

BARCLAY

Serial No.: 10/789,635

Filed: February 27, 2004

Atty. File No.: 2997-1-3-2-2

For: "Process for the Heterotrophic Production  
of Microbial Products with High  
Concentrations of Omega-3 Highly  
Unsaturated Fatty Acids"

Commissioner for Patents  
Washington, D.C. 20231

NOTIFICATION OF EXISTENCE OF  
LITIGATION REGARDING SUBJECT  
MATTER SOUGHT TO BE PATENTED  
UNDER MPEP 2001.06(c)

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS  
FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO  
COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA  
VA 22313-1450 ON MARCH 15, 2004.

SHERIDAN ROSS P.C.

BY: *Christina Kohnert*

Dear Sir:

Applicants wish to bring to the Examiner's attention the existence of litigation related to the subject matter of the above-referenced application. Civil Action No. 03-896-GMS was filed in the United States District Court for the District of Delaware on September 23, 2003, for a parent application of the above referenced application, namely U.S. Serial No. 09/461,709, now U.S. Patent No. 6,451,567. Enclosed are copies of the following documents in this case.

1. Complaint and Demand for Jury Trial;
2. Answer to Complaint and Counterclaims by Nutrinova Inc. and Nutrinova Nutrition Spécialties and Food Ingredients GMBH;
3. Plaintiff's Motion to Strike Paragraph 26 of the Affirmative Defenses, Dismiss Paragraph 48 of Count I, and Dismiss Count III of the Counterclaims by Nutrinova Inc. and Nutrinova Nutrition Spécialties and Food Ingredients GMBH, filed December 15, 2003;
4. Opening Brief in Support of Plaintiff's Motion to Strike Paragraph 26 of the Affirmative Defenses, Dismiss Paragraph 48 of Count I, and Dismiss Count III of the Counterclaims by Nutrinova Inc. and Nutrinova Nutrition Spécialties and Food Ingredients GMBH, filed December 15, 2003;

5. Answering Brief by Defendants to Plaintiff's Motions to Strike Defense and to Dismiss Counterclaims; and
6. Reply Brief in Support of Plaintiff's Motion to Strike Paragraph 26 of the Affirmative Defenses, Dismiss Paragraph 48 of Count I, and Dismiss Count III of the Counterclaims by Nutrinova Inc. and Nutrinova Nutrition Specialties and Food Ingredients GMBH, filed January 9, 2004.

No fees are believed to be due with the submission of this information; however, if any fees are due, please debit Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

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Date: March 15, 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MARTEK BIOSCIENCES CORPORATION,

Plaintiff,

v.

NUTRINOVA INC., NUTRINOVA  
NUTRITION SPECIALTIES & FOOD  
INGREDIENTS GMBH, CELANESE  
VENTURES GMBH, and CELANESE AG,

Defendants.

C.A. No. 03 - 896

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2003 SEP 23 PM 1:46

**COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiff, Martek Biosciences Corporation ("Martek"), by its undersigned attorneys, hereby states the following cause of action for patent infringement against Defendants, Nutrinova Inc., Nutrinova Nutrition Specialties & Food Ingredients GmbH (collectively, "Nutrinova"), Celanese Ventures GmbH, and Celanese AG (collectively, "Celanese").

**PARTIES**

1. Plaintiff Martek Biosciences Corporation is a Delaware corporation having its principal place of business at 6480 Dobbin Road, Columbia, MD 21045.
2. On information and belief, Defendant Nutrinova Inc. is a Delaware corporation having a principal place of business at 285 Davidson Avenue, Somerset, NJ 08873.
3. On information and belief, Defendant Nutrinova Nutrition Specialties & Food Ingredients GmbH is a German company having a principal place of business at Industriepark Höchst, Frankfurt 65926, Germany.

4. On information and belief, Defendant Celanese Ventures GmbH is a German company having a principal place of business at Industriepark Höchst Geb K801, Frankfurt 65926, Germany.

5. On information and belief, Defendant Celanese AG is a German company having a principal place of business at Frankfurter Street 111, Kronberg 61476, Germany.

6. On information and belief, Nutrinova Inc., Nutrinova Nutrition Specialties & Food Ingredients GmbH, Celanese Ventures GmbH, and Celanese AG are affiliated companies.

#### NATURE OF THE ACTION

7. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, Sections 100 *et seq.*

#### JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Nutrinova Inc. by virtue of, *inter alia*, its incorporation in Delaware, its conduct of business in Delaware, its continuous and systematic contacts with Delaware, and its acts of infringement, contributory infringement and/or inducing infringement in Delaware.

10. This Court has personal jurisdiction over Nutrinova Nutrition Specialties & Food Ingredients GmbH, Celanese Ventures, and Celanese AG by virtue of, *inter alia*, their conduct of business in Delaware, their continuous and systematic contacts with Delaware, and their acts of infringement, contributory infringement and/or inducing infringement in Delaware.

11. Venue is proper in this district pursuant to the provisions of 28 U.S.C. §§1391 and 1400(b).

### PATENTS IN SUIT

12. United States Patent No. 6,607,900 (the “‘900 patent”), entitled “Enhanced Production of Lipids Containing Polyenoic Fatty Acid by Very High Density Cultures of Eukaryotic Microbes in Fermentors” (Copy attached as Exhibit A), duly and legally issued on August 19, 2003.

13. United States Patent No. 6,451,567 (the “‘567 patent”), entitled “Fermentation Process for Producing Long Chain Omega-3 Fatty Acids with Euryhaline Microorganisms” (Copy attached as Exhibit B), duly and legally issued on September 17, 2002.

14. Martek is the assignee and owner of the ‘900 and ‘567 patents.

### PATENT INFRINGEMENT

15. Plaintiff repeats and realleges each of the allegations of paragraphs 1 through 14 as if completely set forth herein.

16. On information and belief, Nutrinova and Celanese, themselves and through their predecessors in interest, have been and still are making, using, offering to sell, selling and/or importing into the United States omega-3 fatty acids called docosahexaenoic acids (DHA), marketed under the brand name DHActive™, which are made by a process and employ compositions that infringe, and will infringe in the future, the ‘900 and ‘567 patents under 35 U.S.C. §271.

17. On information and belief, Nutrinova and Celanese have been and still are directly infringing, actively inducing infringement, and/or contributing to the infringement of the ‘900 and ‘567 patents, and will so infringe these patents in the future.

18. On information and belief, Nutrinova and Celanese have conducted their unlawful activities with notice and full knowledge of the ‘900 and ‘567 patents, and will continue those activities in the future.

19. On information and belief, Nutrinova's and Celanese's infringement of the '900 and '567 patents has been, and continues to be, willful and deliberate.

20. Unless enjoined by this Court, Nutrinova's and Celanese's continued acts of infringement of the '900 and '567 patents will cause substantial and irreparable harm to Plaintiff.

REQUEST FOR RELIEF

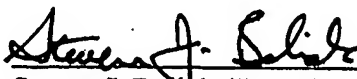
WHEREFORE, Plaintiff respectfully requests the following relief:

- a. The entry of judgment in its favor, and against Nutrinova and Celanese, determining that Nutrinova and Celanese have infringed, and declaring that Nutrinova and Celanese will infringe, one or more claims of the '900 and '567 patents under 35 U.S.C. § 271 and that their infringement has been willful;
- b. The entry of preliminary and permanent injunctions enjoining Nutrinova and Celanese, their officers, directors, agents, employees, successors and assigns, and any persons acting in concert or privity with them, from infringing the '900 and '567 patents;
- c. An award to Plaintiff of damages adequate to compensate for Nutrinova's and Celanese's infringement, trebled or increased in such other amounts as the Court shall deem appropriate on a finding of willful infringement;
- d. An award to Plaintiff of its costs and disbursements in this action, including its attorneys' fees; and
- e. Such other relief as this Court deems just and proper.

JURY DEMAND

Martek hereby respectfully requests a trial by jury on all issues so triable.

ASHBY & GEDDES

A handwritten signature in black ink, appearing to read "Steven J. Balick", is written over a horizontal line.

Steven J. Balick (#2114)

John G. Day (#2403)

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Dated: September 23, 2003

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